

HENRY T. CLARK.

JUNE 23, 1898.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. GRAFF, from the Committee on Claims, submitted the following

REPORT.

[To accompany H. R. 8465.]

The Committee on Claims, to whom was referred House bill 8465, having had the same under consideration, report the same back to the House with the recommendation that it be amended as follows:

Strike out the title to said bill and insert in lieu thereof as the title the words "For the relief of Henry T. Clark."

Insert after the word "assembled," in line 2, the words:

That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay to Henry T. Clark the sum of two thousand nine hundred dollars, out of any moneys not otherwise appropriated.

Insert after the word "four," on line 3, the words "value and."

Strike out, on lines 2 and 8, the words "four hundred and eighty dollars per year."

Insert on line 8, after the word "of," the words "and title to."

Strike out all after the word "Clark," in line 16, and add section 2, as follows:

SEC. 2. That the said sum of twenty-nine hundred dollars is to be accepted and received by Henry T. Clark in full of all claims and demands on account of said buildings, the titles to said buildings to remain in the United States.

And as amended your committee recommend that the bill do pass.

Your committee were of the opinion that \$2,900 was sufficient to cover the rent and value of said buildings.

We hereto append the recent correspondence of the War Department with the committee relative to said claim, and also a report of the Committee on Military Affairs of the Senate, made in Fifty-fourth Congress, relative to this matter, which together set forth the facts in the claim.

COMMITTEE ON CLAIMS, HOUSE OF REPRESENTATIVES,
Washington, D. C., March 25, 1898.

SIR: I have the honor to refer to you the inclosed bill (H. R. 8465), appropriating money for rent and value of certain buildings on the northwest quarter of the northwest quarter of section 2, township 13, range 13, Fort Crook, Nebr., and respectfully ask the opinion of the War Department on its merits, with such information as you may deem pertinent.

Yours, respectfully,

JOSEPH V. GRAFF.

Hon. GEORGE D. MEIKLEJOHN,
Assistant Secretary of War, City.

HENRY T. CLARK.

[First indorsement.]

WAR DEPARTMENT, *March 29, 1898.*

Respectfully referred to Lieut. Col. C. F. Humphrey, Deputy Quartermaster-General, United States Army (through the Quartermaster-General), for report as to the value of the buildings on the Zucher tract of land, at Fort Crook, on February 9, 1890, and for his estimate of the present value of the said buildings.

G. D. MEIKLEJOHN, *Assistant Secretary of War.*

[Second indorsement.]

WAR DEPARTMENT, QUARTERMASTER-GENERAL'S OFFICE,
Washington, March 29, 1898.

Respectfully forwarded, by direction of the Quartermaster-General, to Lieut. Col. C. F. Humphrey, depot quartermaster, Washington, D. C.

M. C. MARTIN,
Captain, and Assistant Quartermaster, U. S. A.

[Third indorsement.]

DEPOT QUARTERMASTER'S OFFICE,
Washington, D. C., March 30, 1898.

Respectfully returned to the Quartermaster-General of the Army, with the information that early in 1890, when I assumed charge of the reservation purchased by the United States for the site of present Fort Crook, and on which the buildings referred to herein are located, they were, in my opinion, worth about the valuation placed on them by the appraisers, viz, \$2,900. Can not say what is the present value of the said buildings, inasmuch as I was relieved from that station two years ago, but am of the opinion that in February, 1896, when relieved, the buildings had deteriorated considerably, owing to constant occupancy by the United States.

C. F. HUMPHREY,
*Deputy Quartermaster-General,
United States Army, Depot Quartermaster.*

[Fourth indorsement.]

QUARTERMASTER-GENERAL'S OFFICE,
Washington, D. C., March 31, 1898.

Respectfully returned to the honorable the Secretary of War, inviting attention to the preceding indorsement of Lieut. Col. C. F. Humphrey, Deputy Quartermaster-General, United States Army.

M. I. LUDINGTON,
Quartermaster-General, U. S. A.

WAR DEPARTMENT,
Washington, March 31, 1898.

SIR: In returning herewith your letter of the 25th instant and its accompanying bill, H. R. 8465, Fifty-fifth Congress, second session, "appropriating money for rent and value of certain buildings on the northwest quarter of the northwest quarter, section two, township thirteen, range thirteen, Fort Crook, Nebraska," upon which you asked the views of this Department, I beg to invite attention to the report thereon of Lieut. Col. C. F. Humphrey, deputy quartermaster-general, dated the 30th instant.

In this connection I also invite attention to an extract from a report of the late Quartermaster-General C. G. Sawtelle, dated January 16, 1897, as follows:

"Had you obtained the Zucher tract by purchase (as it appears from your letter was originally intended) in transferring it to the United States the improvements could have been retained, as in the case of other lands which you deeded, but it seems you were unable to purchase that tract, and to obtain it to the United States was obliged to resort to condemnation proceedings. By such the title to the land passed directly to the United States, and it is not seen how the improvements could now be lawfully turned over to you."

I also invite attention to the following extract from a report of the Judge-Advocate-General of February 20, 1897:

"As Mr. Clarke was permitted to except the buildings from the lands conveyed by himself and wife by deed dated September 7, 1889, it is assumed that the under-

standing with him was that these buildings would be reserved, and it is possible that the understanding also was that he could purchase the Zucher tract and convey the same to the United States and reserve the buildings located thereon. But as the Zucher tract had to be condemned, the legal title to the buildings thereon passed directly to the United States. It would seem, however, that if the understanding was that Mr. Clarke could retain these buildings he would be equitably entitled to remove them, or to their value to one who would have to remove them, and to a fair percentage on this value since June, 1890, for the reason that the cost of the Zucher tract, including the buildings thereon, was deducted from the amount agreed to be paid him for the entire tract of about 546 acres, with the buildings reserved from the entire tract."

Attention is further invited to Senate Report 1568, Fifty-fourth Congress, second session (report of Committee on Military Affairs), in which a copy of the proposition made by Mr. Clarke to the War Department is shown, and in which the committee report favorably on the claim of Mr. Clarke, and remark as follows:

"Your committee finds that the buildings on said tract were constructed between the years 1875 and 1880, and worth about the amount at which they are shown to have been included in the appraisal, and said Clarke should be paid either that amount with interest or his title to the buildings should be recognized and he should be paid a reasonable rental for the same up to the present time."

It is suggested that the bill be amended by adding thereto the following section: "Sec. 2. The said sum to be accepted and received by Henry T. Clarke in full for all claims and demands on account of said buildings, the title to said buildings to remain in the United States."

With such amendment the bill is recommended to favorable consideration.

Very respectfully,

G. D. MEIKLEJOHN,
Assistant Secretary of War.

Hon. JOSEPH V. GRAFF,
Chairman Subcommittee on Claims, House of Representatives.

[Senate Report No. 1568, Fifty-fourth Congress, second session.]

The Committee on Military Affairs, having had under consideration the amendment intended to be proposed by Mr. Allen to the bill (H. R. 10329) making appropriations to supply deficiencies in the appropriations for the fiscal year ending June 30, 1897, and for prior years, and for other purposes, submit the following report:

On July 29, 1889, Mr. Henry T. Clarke, of Omaha, Nebr., made a proposition to the Secretary of War, which, so far as it is material, is as follows:

"Will sell to the United States all the land owned by me in section 2, township 13, north of range 13 east, in Sarpy County, Nebr., except a tract 10 chains wide along entire east side of said section, containing 80 acres, and the circular strip for railroad track of 4 acres in northwest part of said section 2, leaving of my land in section 2 441.11 acres (see plat), for the sum of \$57,400, and will guarantee to obtain for the United States the remainder of the land, aggregating 60.56 acres, in section 2, lying due north of land offered above, at rate of \$132.50 per acre, providing that if said land can not be purchased at a reasonable price that you will cause same to be condemned, and I will agree to pay or contribute any amount that may be found that the owners of the said 60.58 acres are entitled to in excess of \$132.50 per acre. This proposition does not include the buildings on lands in said section 2."

On the 7th day of September, 1889, the said Henry T. Clark and wife conveyed to the United States of America all of the land described in the aforesaid proposition, except one tract, owned by Henry Zucher, of 43.08 acres, for the consideration, as stated in said deed, of \$61,400.

In accordance with an understanding reached between the Secretary of War and Mr. Henry T. Clark, the Zucher tract was condemned, and all the expenses of said condemnation were paid by the United States, with the acquiescence of Mr. Clark, and deducted from the total amount of \$66,666.66, for which amount the said Clark had agreed to secure the entire tract embraced in his proposition. The total amount of such condemnation and expenses amounted to \$8,657.48. There was paid by the United States to Mr. Clark the sum of \$58,009.18, which was the total sum received by him for his conveyance to the United States, instead of the sum of \$61,400 therein named as the consideration for the deed.

One of two propositions is true: Either the Government condemned the land for Mr. Clark's benefit and paid for it out of the total sum for which he was to secure title to the entire tract, or the condemnation was for the Government on its own account and Mr. Clark was not in any manner bound or obligated thereby. If the first proposition is true, the entire tract of land came to the Government in accordance with the terms of Mr. Clark's proposition of July 29, 1889, and according to that

proposition the buildings on all the lands were not to go to the United States, but were to remain the property of Mr. Clark. If the second proposition is true, Mr. Clark had no concern in the condemnation proceedings and was entitled to receive the full consideration price stated in his deed for his conveyance, to wit, \$61,400. Mr. Clark is therefore entitled either to receive the balance of his consideration price, to wit, the difference between \$61,400 and \$58,009.18, being \$3,390.82, or it must be conceded that the buildings on the Zurcher tract belong to Mr. Clark. The facts in this respect are set forth in the letter of G. Norman Lieber, Judge-Advocate-General, addressed to the Secretary of War on the 20th day of February, 1897, copy of which is hereto attached.

The only controversy in this case arises from the claim made by the officers of the Government that the Zurcher tract was condemned by the United States; that thereby the title to the property vested in the United States; that the condemnation was of land and buildings, and therefore the title to both land and buildings is in the United States. This is undoubtedly true as a proposition of law; but to insist upon it is to repudiate the obligation of the contract evidenced by the proposition of Mr. Clark made to the Secretary of War on July 29, 1889—is to release Mr. Clark from the obligation thereby assumed of securing the entire tract for a specified sum, and is to leave Mr. Clark with a legal and valid claim for the balance of the consideration money specified in said deed, to wit, the sum of \$3,390.82.

Your committee are of the opinion that the condemnation was made with the consent of Mr. Clark, under his proposition of July 29, 1889; that the entire tract having been secured by the Government for the guaranteed price named in said proposition, Mr. Clark was entitled to the buildings on all the land embraced in the proposition, and whether his title to the buildings on the Zurcher tract is legal or equitable, the result is the same. The Government should either stand by its contract, as evidenced in that proposition, or it should not seek to hold Mr. Clark to its terms.

From the affidavits of two of the appraisers who appraised the Zurcher tract on condemnation proceedings now on file with your committee, it appears that in arriving at the amount of the condemnation the value of the buildings on the tract was fixed at about the sum of \$2,900.

Your committee find that the United States entered into possession of the property about June 16, 1890, and occupied and used the buildings during the construction of Fort Omaha and down to the present time.

Your committee find that the buildings on said tract were constructed between the years of 1875 and 1880, and were worth about the amount at which they are shown to have been included in the appraisal, and said Clark should be paid either that amount with interest or his title to the buildings should be recognized and he should be paid a reasonable rental for the same up to the present time.

We therefore report favorably the amendment introduced by Mr. Allen, of Nebraska, and referred to this committee on January 11, 1897, with the following amendments:

In section 1, line 1, strike out the words "rent of" and insert the words "the value and rent of."

In section 1, strike out all after the word "Nebraska," in line 3, down to and including the word "of," in line 6, and insert in lieu thereof the words "being the," and add at the end of the section the words "said buildings having been reserved by said Clark, but taken by the United States."

Add the following section:

"SEC. 2. That the said sum of two thousand nine hundred dollars is to be accepted and received by Henry T. Clark in full for all claims and demands on account of said buildings, the title to said buildings to remain in the United States."

In further support of the position taken by the committee, attention is called to the letter of the Secretary of War addressed to Senator C. F. Manderson on the 31st day of January, 1890, Senator Manderson's letter addressed to Mr. H. T. Clarke on February 1, 1890, the telegram of said Clarke to said Manderson in answer thereto on February 4, 1890, and also Mr. Clarke's letter to the Secretary of War of same date; copies of all of which are hereto attached.

WAR DEPARTMENT, OFFICE JUDGE-ADVOCATE-GENERAL,
Washington, D. C., February 20, 1897.

SIR: The chairman of the Committee on Military Affairs, United States Senate, refers an amendment to the sundry civil appropriation bill, introduced by Senator Allen, for the opinion of this office as to the merits of the proposed amendment. The amendment is as follows:

"For rent of buildings on the northwest quarter of the northwest quarter of section two, township thirteen, range thirteen, Fort Crook, Nebraska, from June sixth, eighteen hundred and ninety, to June sixth, eighteen hundred and ninety-six, at four

hundred and eighty dollars per year, being for the use of buildings on said land acquired by the United States by condemnation proceedings in the suit of the United States against Henry Zucher, in accordance with a proposition made by Henry T. Clarke to the Secretary of War, July twenty-ninth, eighteen hundred and eighty-nine, which said proposition was for the sale of lands to the United States for a new Fort Omaha, now Fort Crook, by which proposition all said buildings were retained by Henry T. Clarke, two thousand eight hundred and eighty dollars."

By an act of Congress approved July 23, 1888, the sale of the Fort Omaha Military Reservation was authorized, and the sum of \$200,000 was appropriated for the purchase of a site for a new post near Omaha, Nebr., and for the construction of buildings thereon, with the proviso that not more than one-third of said sum (i. e., not more than \$66,666.66) shall be expended in the purchase of a site.

Under authority of this act the Secretary of War purchased from Henry T. Clarke and wife by deed dated September 7, 1889, 502.59 acres and caused to be condemned 43.08 acres, the property of Henry Zucher. The deed from Henry T. Clarke and wife reserved "all buildings, sheds, and stables" on the 502.59 acres conveyed thereby; but the legal title to the buildings on the 43.08 acres acquired by condemnation proceedings from Henry Zucher passed under said proceedings to the United States.

It appears from papers on file in this office that Mr. Clarke's claim is that he is equitably entitled to the buildings on the 43.08 acres acquired from Mr. Zucher, and the proposed amendment to the sundry civil bill now under consideration is for rent for these buildings. In a letter to the Quartermaster-General dated October 20, 1890, he states his claim as follows:

"I think if you will confer with the honorable Secretary of War you will conclude that the ownership of the building and improvements on the tract of ground acquired for the use of New Fort Omaha from Henry Zucher belong to me, as the proposition that was made by the Secretary of War to me, and which I afterwards accepted, was that I was to furnish the land owned by me in section 2, and to acquire by purchase that owned by Messrs. Phillips, Stuben, and Zucher for the stipulated sum of \$66,666.66, with the understanding that the improvements thereon were to be retained by me, and with the further understanding that in case I was unable to obtain the tracts above stated at a reasonable price, that I could have the same condemned through the War Department and deduct from the price above stated the price at which said tracts should be appraised by condemnation proceedings."

The proposition of Mr. Clarke of July 29, 1889, to the Secretary of War, referred to in the proposed amendment and printed in Senate Doc. No. 54, Fifty-fourth Congress, second session, so far as it is material to this question, is as follows:

"Will sell to the United States all the land owned by me in section 2, township 13 north, of range 13 east, in Sarpy County, Nebr., except a tract 10 chains wide along entire east side of said section, containing 80 acres, and the circular strip for railroad track of 4 acres in northwest part of said section 2, leaving of my land in section 2 441.11 acres (see plat), for the sum of \$57,400, and will guarantee to obtain for the United States the remainder of the land, aggregating 60.56 acres in section 2, lying due north of land offered above, at rate of \$132.50 per acre; providing that if said land can not be purchased at a reasonable price, that you will cause same to be condemned, and I will agree to pay or contribute any amount that may be found that the owners of the said 60.58 acres are entitled to in excess of \$132.50 per acre. This proposition does not include the buildings on lands in said section 2."

There is no record in the War Department of the receipt or acceptance of this proposition; but the following is a copy of a letter dated August 7, 1889, from the chief clerk of the War Department to the commanding general Department of the Platte:

"I have the honor to inform you that the Secretary of War has agreed to purchase from Henry T. Clarke, of Omaha, Nebr., a tract of land of about 431.11 acres situated in section 2, township 13, Sarpy County, Nebr., provided that the Government shall be able to acquire certain other contiguous parcels delineated on the accompanying map, viz, * * * Phillips, 17.50 and 7.85 acres; John Stuben, 10.56 and 10.56 and 25 acres; Henry Zucher, 4½, 18, 45, 7.07, and 12.03 acres.

"Mr. Clarke expresses an ability to acquire from their owners and transfer to the United States good titles to all the parcels stated except those of Henry Zucher. In reference to them, the Secretary of War desires you to ascertain from their owner the most reasonable terms under which he will sell the same to the United States.

"The Secretary of War also desires that you cause to be investigated with the aid of the United States district attorney the titles of the present reputed owners to the several tracts above named, and that you make report thereon.

"Should Mr. Clarke inform you that he encounters any difficulty in acquiring the tracts of Phillips and Stuben, or any one thereof, the Secretary of War authorizes you to enter into negotiations with them as above indicated in the case of Henry Zucher. In all of these negotiations it is desired that you consult with Mr. Clarke.

"For your information it is to be remarked that in the event of an unreasonable price being demanded for the land contained in any of the tracts named, or of the

title being doubtful, it is the intention of the Department to acquire such parcels by proceedings of condemnation in the United States courts.

"Please return the accompanying plat, with certificate of the district attorney, with your report in this matter."

The deed from Clark and wife recites that the consideration for the lands conveyed thereby was \$61,400, but it appears that this amount was not actually paid to him, but that \$50,000 was paid to him on November 15, 1889, and final settlement with him was deferred to await the result of the condemnation proceedings for the acquisition of the Zucher tract. It also appears that he was consulted as to whether the award of \$8,157.65 for the Zucher tract should be accepted, and that he consented to its acceptance.

The following is an extract from a letter dated June 16, 1890, from Lieut. Col. G. B. Dandy, depot quartermaster at Washington, D. C., to Lieut. Col. William B. Hughes, chief quartermaster, Department of the Platte:

"In addition to the above I am directed by the Quartermaster-General of the Army, 'to pay the expenses of the condemnation proceedings and all other expenses connected with the purchase of the site of New Fort Omaha, and to pay the balance of the sum of \$66,666.66 to H. T. Clark, of Omaha, Nebr.' * * * Possibly Mr. Clark should be consulted in regard to any services rendered by anyone, and which would be a proper charge in connection with procuring the site."

It further appears that on August 4, 1890, Lieutenant-Colonel Dandy stated an account in Clark's favor for \$66,666.66, less the following amounts—

November 27, 1888, printing, etc.....	\$77.53
November 15, 1889, paid by H. T. Clark.....	50,000.00
January 9, 1890, recording deed.....	1.40
April 5, 1890, recording deed.....	1.40
May 6, 1890, recording deed.....	1.00
June 16, 1890, paid court for Zucher tracts.....	8,157.65
July 8, 1890, appraisers' services.....	60.00
August 4, 1890, district attorney's services.....	300.00
August 4, 1890, clerk and marshal's services.....	50.20
August 4, 1890, recording condemnation proceedings.....	8.30
Total.....	58,657.48

leaving a balance of \$8,009.18, which amount was received August 4, 1890, by Mr. Clarke "in full of all claims."

While there is no record of a formal proposition and its acceptance, it appears from the foregoing that the understanding with Mr. Clarke was that the cost of the entire tract of about 546 acres must not exceed the amount available therefor, i. e., \$66,666.66, and that such of the parcels as Mr. Clarke could not purchase and convey to the United States with the lands already owned by him would be condemned, and the cost of the same would be deducted from the amount appropriated, and the balance would be paid to Mr. Clarke. As Mr. Clarke was permitted to except the buildings from the lands conveyed by himself and wife by deed dated September 7, 1889, it is assumed that the understanding with him was that these buildings would be reserved, and it is possible that the understanding also was that he could purchase the Zucher tract and convey the same to the United States and reserve the buildings located thereon. But as the Zucher tract had to be condemned, the legal title to the buildings thereon passed directly to the United States. It would seem, however, that if the understanding was that Mr. Clarke could retain these buildings he would be equitably entitled to remove them or to their value to one who would have to remove them, and to a fair percentage on this value since June, 1890, for the reason that the cost of the Zucher tract, including the buildings thereon, was deducted from the amount agreed to be paid him for the entire tract of about 546 acres, with the buildings reserved from the entire tract.

No opinion is expressed as to whether the rent named in the proposed amendment is reasonable, for the reason that the records of this office do not show the value of the buildings to one who would have to remove them. It appears, however, that in May, 1890, Mr. Zucher offered \$150 for them, stating that they would be practically valueless after their removal, as the distance of removal would be something over half a mile, and that this offer was rejected, as they were considered worth more than that to the United States.

It also appears that in a report to the Secretary of War, dated January 16, 1897, the Quartermaster-General stated:

"It appears that the buildings for which Mr. Clarke claims rent were owned by and situated upon the land obtained from Mr. Zucher, and consisted of a frame dwelling, built about 1855, and outbuildings, all of which were of no considerable value."

Very respectfully,

G. NORMAN LEIBER,
Judge-Advocate-General.

The SECRETARY OF WAR.

WAR DEPARTMENT,
Washington, January 31, 1890.

SIR: I have the honor to advise you that on the 21st instant Mr. H. T. Clarke, of Omaha, wrote the Department that he deemed the appraisement of \$8,157.66 in condemnation proceedings of the property of Mr. Henry Zucker, required for the new post of Fort Omaha, as excessive, and requested that an immediate appeal be taken, the United States court being now in session. This letter was referred to the Attorney-General on the 30th instant, and Mr. Clarke so advised.

As Mr. Clarke will receive the balance of the appropriation remaining after deducting the award (and legal expenses attending the same) made to Mr. Zucker, I should be glad to have an expression of your views whether it would not be best for Mr. Clarke to agree to the award as made under the condemnation proceedings, as an appeal will cause much delay in the settlement of the case, which may prove embarrassing to Mr. Clarke. I thought you might feel interested to expedite the matter.

Very respectfully,

REDFIELD PROCTOR, *Secretary of War.*

Hon. C. F. MANDERSON,
United States Senate.

UNITED STATES SENATE,
Washington, D. C., February 1, 1890.

DEAR SIR: I have just received a letter from the Secretary of War of which I inclose a copy. I quite agree with the view as expressed by the Secretary that it would be infinitely better for the Government and better for you to accept the award in the condemnation proceedings, and pay to Mr. Zurcher the amount awarded to him in the condemnation proceedings. Further delay is not to be regretted, but in the attitude of affairs, is extremely hazardous. I want the title of this land to be obtained for the Government as speedily as possible, and when the Government has procured the title and decided upon its plan of buildings, I propose to move for an increase of appropriation. I desire to do this, if possible, at this session of Congress. While it may be that Zurcher is receiving a good round price for this land, I really do not think you can complain under all circumstances about the amount that you are to receive, and I hope that I will hear from you at once signifying your acquiescence in the course suggested by the Secretary.

I have said to him that I would write to you about the matter, and that I fully agree with him as to the advisability of the action proposed by him.

Truly, yours.

CHARLES F. MANDERSON.

HENRY T. CLARKE, Esq., *Omaha, Nebr.*

OMAHA, NEBR., February 4, 1890.

Hon. CHAS. F. MANDERSON,
Washington, D. C.:

Your letter of 1st just received. Will have Zurcher award confirmed to-day.

H. T. CLARK.

OMAHA, NEBR., February 4, 1890.

SIR: I have a copy of your letter of the 31st ultimo to General Manderson, forwarded to me by him under date of February 1, which came to hand this morning. I appreciate your remarks as to the Zurcher reward, and immediately telephoned my attorney at Lincoln to have the United States district attorney have this sale confirmed at once.

I did not anticipate, when I wrote you on the 21st ultimo, but what we would be able to get a favorable decision of the matter in the United States court which is now in session.

Would be pleased to have the matter closed up at as early a day as I can.

Yours, with kind regards,

Hon. REDFIELD PROCTOR,
Secretary of War, Washington, D. C.

